

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CLERK

BY AW
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UNITED STATES OF AMERICA)

v.)

DEIRDRE HEY)

Case No. 5:14-cr-28

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**
(Docs. 196 & 205)

This matter came before the court for a review of the Magistrate Judge's December 12, 2016 Report and Recommendation ("R & R") (Doc. 205), wherein he recommended that the court deny the 28 U.S.C. § 2255 motion filed by self-represented Defendant Deirdre Hey. Defendant seeks a reduction of her below-Guidelines sentence of two concurrent terms of 33 months imprisonment based on Amendment 782 to the United States Sentencing Guidelines ("USSG"), which went into effect in November of 2014, and because her allegedly minor role in the offense justifies an offense level reduction. (Doc. 114.)¹ Neither party has filed an objection to the R & R, and the time to do so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and

¹ Although she remains subjected to a three-year term of supervised release, Defendant was released from custody on September 30, 2016.

recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Defendant faced an advisory Sentencing Guidelines imprisonment range of 135 to 168 months, based on adjusted offense level of 31 and Criminal History Category of III. Defendant has completed her sentence and was released from incarceration on September 30, 2016. She did not take a direct appeal of the court's advisory Sentencing Guidelines calculation.

In his twelve page R & R, the Magistrate Judge thoroughly considered Defendant's arguments and properly concluded that Defendant's claims are moot and procedurally barred, and that Defendant failed to satisfy the legal requirements for relief pursuant to § 2255. The Magistrate Judge further recommended that the court deny Defendant's request for an evidentiary hearing on her motion. The court finds the Magistrate Judge's conclusions well-reasoned and consistent with the applicable law.


CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 205), DENIES Defendant's motions to vacate and for an evidentiary hearing, and DISMISSES Defendant's § 2255 motion (Doc. 196).

Pursuant to Fed. R. App. P. 22(b)(1) and 28 U.S.C. § 2253(c)(2), the court DENIES Defendant a certificate of appealability in this matter because Defendant has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 2nd day of May, 2017.



Christina Reiss, Chief Judge
United States District Court